

§ 44.15 Referral to Chief Administrative Law Judge.

Upon receipt of a request for hearing as provided in § 44.14 of this part, the Administrator shall, within 5 days, refer to the Chief Administrative Law Judge the original petition, the proposed decision and order, all information upon which the proposed decision was based, any written request for a hearing on the petition filed, any other written comments or information received and considered in making the proposed decision. The MSHA investigation report shall be made part of the record on the petition.

[55 FR 53441, Dec. 28, 1990]

§ 44.16 Application for temporary relief; relief to give effect to the proposed decision and order.

(a) *Time for filing.* An application for temporary relief from enforcement of a mandatory standard may be filed at any time before a proposed decision and order is issued on a petition for modification and shall be served upon all parties to the proceeding.

(b) *With whom filed.* The application shall be filed with and decided by the appropriate Administrator.

(c) *Investigation and decision.* Upon receipt of an application for temporary relief, the Administrator shall cause an investigation to be made as to the merits of the application. As soon thereafter as practicable, but in no event greater than 60 days from filing of the application, the Administrator shall issue a decision. If the Administrator does not issue a decision within 60 days of filing of the application, the application shall be deemed to be denied.

(d) *Contents of application.* An application for temporary relief shall comply with applicable general requirements of this part, state the specific relief requested, and include specific evidence showing how the applicant meets the criteria set forth in paragraph (e) of this section.

(e) *Criteria.* Before temporary relief is granted, the applicant must clearly show that—

(1) The application was filed in good faith;

(2) The requested relief will not adversely affect the health or safety of miners in the affected mine;

(3) An identifiable hazard to miners exists in the mine which is caused by application of the standard at the mine;

(4) Other means will be used to reasonably address the hazard against which the original standard was designed to protect; and

(5) Compliance with the standard while the petition for modification is pending will expose miners to the identifiable hazard upon which the application is based.

(f) *Response.* All parties to the proceeding in which an application for temporary relief has been filed shall have 15 days from receipt of the application to file a written response with the Administrator.

(g) *Evidence.* An application for temporary relief or a response to such an application may be supported by affidavits or other evidentiary matter.

(h) *Findings.* Temporary relief may be granted by the Administrator upon a finding that application of the standard at the mine will result in a diminution of safety to the miners at such mine.

(i) *Appeal to the Office of the Administrative Law Judges.* If the application for temporary relief is granted by the Administrator, any other party may request a hearing within 15 days of the Administrator's decision. The request shall be addressed to the Administrator and shall be referred by the Administrator, along with the petition for modification, to the Chief Administrative Law Judge in accordance with § 44.15. The hearing and decision of the presiding administrative law judge shall be in accordance with subparts C through E of this part. After referral of the petition for modification and application for temporary relief, no further decision shall be rendered by the Administrator.

(j) *Duration of relief.* An order granting temporary relief shall be effective until superseded by the Administrator's proposed decision and order, unless a hearing is requested in accordance with paragraph (i) of this section. If such hearing is requested, the temporary relief shall remain in effect until modified, affirmed or set aside by the presiding administrative law judge.